

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>Stephan Miller,</b>	)	<b>CASE NO. 5:05 MC 32</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE PATRICIA A. GAUGHAN</b>
	)	
<b>vs.</b>	)	
	)	
<b>Margaret Bradshaw,</b>	)	<b><u>Order</u></b>
	)	
<b>Respondent.</b>	)	

This matter is before the Court upon Petitioner's Motion for Equitable Tolling of Habeas Corpus (Doc. 1). This Court previously denied petitioner's request for a writ of habeas corpus in Case No. 01 CV 2780 on the grounds that the petition was not timely filed and equitable tolling was not justified. Petitioner now files a "motion for equitable tolling" arguing that the counsel representing him in the pervious case was incompetent. As petitioner himself recognizes, however, attorney error resulting in the untimely filing of a petition does not justify equitable tolling. *See, Elliott v. Dewitt*, unreported, 10 Fed. Appx. 311 (6th Cir. 2001). Having reviewed petitioner's motion, the Court finds that petitioner has failed to present any circumstances warranting equitable tolling. As such, petitioner's motion is DENIED.

This Court now considers whether to grant a certificate of appealability (COA) pursuant to 28 U.S.C. § 2253 which states in relevant part:

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(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court . . .

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2253.

This Court has concluded that petitioner has failed to point to any factor justifying equitable tolling. The Court further finds that jurists of reason would not find such conclusion debatable. Accordingly, the Court does not find that a COA should issue.

Therefore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a COA. 28 U.S.C. § 2253(c); Fed. R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
United States District Judge

Dated: 7/12/05